IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 898 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANIBEN

Versus

MOHMAD RAFIK ISMAILBHAI JAJ

Appearance:

1. First Appeal No. 898 of 1984
MR RN SHAH for Petitioner No. 1-5
RULE SERVED for Respondent No. 1-2
MR RR MARSHALL for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 28/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The appellant are the original claimants. They have challenged in this Appeal the impugned Judgment and Award dated 12.10.1983 passed by the learned Motor Accident Claims Tribunal, Sabar Kantha at Himatnagar in M.A.C.Petition No.207 of 1981, whereby the learned Tribunal partly allowed the claim petition of the claimant and awarded in all Rs.49,200/- instead of Rs.2,50,000/- claimed by the claimants at the rate of 6 % p.a. from the date of application till realisation. The learned Tribunal also made it clear that if the amount is not deposited within 3 months from the date of Award the amount shall carry an interest at the rate of 12 % p.a. All the opponents No.1,2 & 3 were jointly and severally liable to pay the said amount of compensation. Rest of the claim of the claimants was dismissed.

2. Aggrieved by this Award the claimants have filed this Appeal. However, they have restricted their claim in this Appeal to Rs.50,000/- only.

3. Learned Counsel Shri Shah appearing for the appellants - claimants has taken us through the entire oral as well as documentary evidence led by the parties before the Tribunal. He has also taken us through the impugned Judgment passed by the learned Tribunal and the reasoning part of the Judgment. He submitted that deceased Punjabhai, aged 45 years, died in a vehicular accident which took place on 18.4.1981 at 10.40 a.m. leaving behind him his widow Naniben aged 43, his son Narsinhbhai aged 25 years and his daughter Mangalaben, aged 27 and his aged parents Laxmiben, mother aged 62 and Hirjibhai, father aged 65 years. He submitted that dependency amount would come to Rs.600/- p.m. as deceased Punjabhai was earning Rs.2100/- to Rs.2200/from agricultural operation and Rs.6000/- per year from supervision. This theory of the claimant was not believed by the learned Tribunal. The learned Tribunal has given reasons in Para : 14 wherein it has come to the conclusion that monthly dependency could not be assessed more than Rs.300/- p.m. which would mean that Rs.3600/- per year. Considering his age as 46 years at the time of accident the learned Tribunal applied 12 years' multiplier and accordingly he awarded Rs.43,200/-, Rs.5000/- towards conventional allowance and Rs.1000/towards funeral expenses. In all learned Tribunal has awarded Rs.49,200/-. Shri Shah submitted that in any case the learned Tribunal should have

assessed monthly dependency at the rate of Rs.600/- per month and not Rs.300/- p.m. and considering the age of the deceased instead of 12, the learned Tribunal should have applied 14 years multiplier. Thus, he submitted that the claimant would be entitled to more than Rs.50,000/-. However, learned Counsel Shri Marshal, appearing for the Insurance Company vehemently submitted that the learned Tribunal has not committed any error in fixing the monthly dependency at the rate of Rs.300/p.m.

4. Considering the evidence led by the parties on record we are of the considered opinion that instead of Rs.300/- p.m. the claimants would be entitled to Rs.500/- p.m. by way of dependency. Applying multiplier of 12 It would come to R.72,000/-. Rs.5000/- more would be added for conventional amount and Rs.1000/- as funeral charges. It would come to Rs.78,000/-. However, the learned Tribunal has awarded in all Rs.49,200/-. Therefore the claimants would be entitled for additional sum of rs.28,800/- in this Appeal and not Rs.50,000/- as claimed by them. Accordingly, this Appeal is partly allowed and it is held that the appellants original claimants are entitled for total compensation of Rs.78,000/- in all. They have already been awarded Rs.49,200/- by the tribunal and therefore they would be entitled to recover additional sum of Rs.28,800/- from the opponents No.1,2 & 3 with interest at the rate of 6% p.a. from the date of application till realisation. If the said amount is not deposited within 3 months from the date of this Judgment then the said amount shall carry interest at the rate of 12 % p.a. All the opponents No.1,2 & 3 are held jointly and severally liable to pay additional compensation of Rs.28,800/- to the claimant with interest at the rate of 6 % p.a. from the date of application till realisation. Rest of the claim of the appellants - claimants is dismissed. The additional amount shall be distributed in proportion as per the Award passed by the learned Tribunal. We make it clear that whatever amount lying in Fixed Deposit in the name of the claimants shall now be paid to them by A/c. payee cheque along with interest accrued on it. The additional amount awarded along with interest and cost be also paid by the account payee cheque. The Appeal is partly allowed accordingly with cost. The award be drawn accordingly. The Insurance Company is directed to deposit the additional amount with cost and interest with the Tribunal within 3 months from the date of receipt of the certified copy of Judgment and Award. On depositing the same the Tribunal may pay the same in proportion to the claimants by Account Payee cheues in their name. Office is directed to draw the Decree and Award

preferably within one month from today.

sd/-

(B.J.Shethna, J.)

Date : November 28, 2002 sd/-

(Kundan Singh,J.)

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